

SOUTHERN PACIFIC COMPANY
LOUIS G. WEDEKIND

IBLA 70-90 Decided October 7, 1970

Railroad Grant Lands

Where an application is filed under Section 321(b) of the Transportation Act of 1940 alleging a conveyance to an innocent purchaser for value by a railroad grantee, the application may not be rejected on its face solely for the reason that the lands applied for have been classified as mineral in character subsequent to the time of the conveyance. It must also be shown that the lands were of known mineral character at any time between the date the railroad line was definitely located and the date of the original sale by the railroad and that the purchaser knew or should have known at the time of his purchase that the lands were of this character.

Res Judicata

The doctrine of res judicata has long been accepted and applied by the Department. However, the doctrine is generally invoked as a bar to a claim for relief only where there has been a final adjudication of a matter before the Department and where it is clear that the same facts and issues are involved in a subsequent matter before the Department.

IBLA 70-90 : Nevada 058575

SOUTHERN PACIFIC COMPANY	:	Railroad Land Grant
	:	Patent application
LOUIS WEDEKIND	:	Set aside and remanded

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Louis G. Wedekind has appealed to the Secretary of the Interior from a decision of the Office of Appeals and Hearings, Bureau of Land Management, dated September 10, 1969, which dismissed his appeal from a decision of the Nevada Land Office holding for rejection the application of the Southern Pacific Company for patent to the SE 1/4 of Section 29, T. 20 N., R. 20 E., M.D.M., Washoe County, Nevada. 1/

This appeal concerns the disposition of a 160-acre tract of public land for which the Southern Pacific Railroad has applied as part of an odd-numbered section within the limits of the grant to its predecessor, the Central Pacific Railroad Company of California, by the Act of July 1, 1862 (12 Stat. 489), and the Act of July 2, 1864 (13 Stat. 356). The Southern Pacific Railroad filed its application, Nevada 058575, on July 1, 1962, on behalf of the real parties in interest, the heirs of George H. Wedekind, pursuant to Section 321(b) Part II, Title III, of the Transportation Act of 1940, 49 U.S.C. sec. 65 (b) (1964). 2/

1/ This appeal is being prosecuted by Louis J. Wedekind, one of the heirs of George H. Wedekind, deceased, and is prosecuted on behalf of all of his heirs.

2/ Application by the railroad in behalf of its assignee is in accordance with established practice (see Southern Pacific Land Co., 42 L.D. 522 (1913); Santa Fe Pacific Railroad Company, 58 I.D. 591 (1944)).

Under section 3 of the Act of July 1, 1862, supra, the Central Pacific Railroad Company of California was granted every alternate section of public land, designated by odd numbers, up to five alternate sections per mile on each side of the railroad line, and within ten miles of each side of the line, if the land was not sold, reserved or otherwise disposed of at the time the line of the road was definitely fixed, and provided " . . . that all mineral lands shall be excepted from the operation of this act." Section 4 of the Act of July 2, 1864, supra, doubled the grant from five to ten sections per mile on each side of said line, and provided, among other things, that the term "mineral land" wherever used therein, or in the original act, should not be construed to include coal or iron land, and that no land granted by that or the original act should include any other mineral land.

The record shows that Central Pacific Railway Company selected the lands at issue, Section 29, T. 20 N., R. 20 E., M.D.M., Selection List No. 9 for lands in Nevada on June 28, 1895. However, before Central Pacific had received a patent for these lands, it issued a quit-claim deed to George H. Wedekind for the sum of \$800.00 on February 18, 1901, transferring its interest in the SE 1/4 of Section 29. The Central Pacific's selection of Section 29 was subsequently denied by the Department in 1916, pursuant to hearings completed in January 1912, Central Pacific Railway Co., 45 L.D. 25 (1916), rehearing denied, 45 L.D. 27 (1916), affirmed, Central Pacific Railway Co. v. Lane, 46 App. D.C. 372 (D.C. Cir. 1917). The basis for the denial was that all the lands in the section were mineral in character and, therefore, excluded under the terms of the Act of July 1, 1862 (Section 3), and the Act of July 2, 1864 (Section 4).

The appellant filed its present application under the Transportation Act of 1940, supra, asserting that patent to the SE 1/4 of Section 29 should issue to the Southern Pacific Railroad on behalf of the heirs of George H. Wedekind based on the quit-claim conveyance to Wedekind as an innocent purchaser for value from the railroad in 1901. 3/

3/ In support of this contention, appellant has submitted a copy of Central Pacific Railway Company Deed No. 8892, dated February 18, 1901, conveying the described land to George H. Wedekind.

Section 321(b) of the Transportation Act provides that if any land grant railroad wishes to take advantage of charging higher rates for carrying Government traffic, it must file a release of any claim it might have against the United States to lands granted to the railroad. It is provided, however, that nothing in Section 321(b) should be construed

... to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value ...

The Southern Pacific Company and its predecessor, the Central Pacific, filed such releases, specifically excepting lands sold to innocent purchasers for value.

By a decision of January 30, 1969, the Nevada Land Office rejected the application under the Transportation Act because the lands applied for had been determined to be mineral in character by the Department in 1916 and by the courts, citing U.S. v. Central Pacific Railway Co., D-31706-B, List No. 9, Serial 01223, affirmed by the Supreme Court of the District of Columbia (Equity No. 34359) and the Court of Appeals of the District of Columbia in Central Pacific Railway Co. v. Lane, No. 3008, 46 App. Cases 372 (1917). It held that the lands in Section 29 were not subject to the original railroad grant, and in accordance with the regulations under the Transportation Act (43 CFR 2224.3-a, 1970 Rev.), ^{4/} rejected the application.

The Office of Appeals and Hearings dismissed the appeal from the Land Office decision on the ground that the doctrine of res judicata or its administrative law counterpart, the doctrine of finality of administrative action, applied to this case, preventing further consideration of an appeal by the Southern Pacific Company. The decision states:

In the present application, the Southern Pacific Company has presented the same issue as that decided in the case cited above [Central Pacific Railway v. Lane, *supra*]. It is therefore determined to be res judicata and a bar to any further claim for relief, and it is not proper again to consider on its merits an appeal on the same issue and for the same land.

^{4/} Now 43 CFR 2631.0-8, 35 F.R. 9613 (1970).

Before a decision can be reached in this case, a determination must be made as to the character of the land from the date the railroad line was definitely located to the date of purchase and whether the purchaser from the railroad was an "innocent purchaser" for value. This has not been done. After a thorough review of the record before us we cannot say with certainty whether or not the departmental decision of 1916 and court decisions of 1917 specifically found that Section 29 lands were mineral in character as of February 18, 1901, the date of purchase from the railroad, or prior thereto. It is elementary that res judicata cannot bar a claim unless the same issues and facts are involved in the subsequent proceeding. Therefore, the doctrine of res judicata does not apply in the instant case and the ruling below was in error.

Prior decisions of the Department provide that a patent may be issued under section 321(b), supra, for railroad grant lands sold by the railroad if the land was nonmineral in character at the time of sale and the purchaser was an innocent purchaser for value, even though the land is subsequently determined to be mineral in character. Southern Pacific Company, 71 I.D. 224 (1964). The bona fides requirement where the land is nonmineral in character at the time of the purchase pertains to the absence of knowledge of its mineral character, if such were the case, between the time the railroad line was definitely located and the date of purchase, for its characterization as such during that period would except it from the grant to the railroad. U.S. v. Southern Pacific Company, 77 I.D. 41 (1970). Even if it is found that the land was mineral in character at or prior to the time of sale, a patent will issue if it is determined that the purchaser was not chargeable with actual or constructive notice of that fact. Ibid.

The concept of a bona fide purchaser or innocent purchaser for value has been analyzed by the Supreme Court under the Act of March 3, 1887, 43 U.S.C. §§ 894-899 (1964), in the cases of United States v. Winona & St. Peter RR, 165 U.S. 463 (1897) and Winona & St. Peter RR v. United States 165 U.S. 483 (1897). The same concepts apply under the Transportation Act of 1940 in the instant case. Generally, for a purchaser not to be bona fide the facts must show that he knew or should have known that the lands were mineral in character as of the date of his

purchase or were of such character so as to have been excluded when the railroad line was definitely located or at any time prior to this purchase. United States v. Southern Pacific Company, *supra*. As was said in United States v. Central Pacific Railway Co., 84 Fed. 218, 221 (Cir. Ct., N.D. Cal. 1898):

... The status of a bona fide purchaser is made up of three essential elements: (1) a valuable consideration, (2) absence of notice; and (3) the presence of good faith.

For the reasons set forth herein, the Bureau's decision is set aside and the case is remanded for the purpose of a hearing. At the hearing, competent evidence should be adduced as to the character of the lands from the time the railroad line was definitely located to and including the time of the purchase from the railroad. In the event it is determined that the land was mineral in character at any time during such period, evidence should be received relating to the bona fides of the purchaser.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), this case is remanded for further consideration and action consistent with this decision.

Francis Mayhue, Member

I concur:

I concur:

Martin Ritvo, Member

Newton Frishberg, Chairman

